

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**EAST KENTUCKY NETWORK, LLC d/b/a APPALACHIAN WIRELESS
AMENDMENT TO PETITION FOR LIMITED WAIVER AND REQUEST
FOR EXTENSION OF COMPLIANCE DEADLINES FOR
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless” or “Appalachian”), by counsel and pursuant to Section 1.3 of the Commission’s Rules,¹ hereby amends its Petition for Limited Waiver and Request for Extension of Compliance Deadlines for Mobility Fund Phase I Public Interest Obligations (“Petition”),² to request an additional extension of the three-year deadline established in the Commission’s rules³ for the submission of drive test data reports.

This Amendment applies only with respect to the following Census Tracts for which Appalachian Wireless was a winning bidder in Auction No. 901 for Mobility Fund Phase I support: Census Tract T21095971300 (Harlan County, SAC 268008), and Census Tract T21153970300

¹ 47 C.F.R. § 1.3.

² The Petition was filed on July 19, 2016, in the above-captioned dockets.

³ 47 C.F.R. § 54.1006(b).

(Magoffin County, SAC 268012).⁴ Specifically, Appalachian Wireless requests an additional two weeks, or until October 31, 2016, to submit its drive test data for these two Census Tracts.

I. Background.

In the Petition, Appalachian Wireless requested that the Commission waive the requirements of Section 54.1006(b) of its rules, and extend (1) the construction and applicable drive test data reporting deadline for Census Tracts T21071920900 and T21095970100, to April 19, 2017, nine months from the existing July 19, 2016, construction and reporting deadline; and (2) the applicable drive test reporting deadline for Census Tracts T21025920600, T21095971300, T21153970300, T21153970400, and T21175950100 (referred to as the “Additional Census Tracts” in the Petition), to October 17, 2016, 90 days from the existing July 19, 2016, construction and reporting deadline.

As explained in the Petition, Appalachian Wireless was required to deploy networks in these Census Tracts that deliver 4G LTE service not later than July 19, 2016 (three years after the authorization of Phase I support for Appalachian) for each Census Tract listed in the Petition. For the Additional Census Tracts, Appalachian Wireless completed this requirement. Also, before the July 19, 2016 deadline, Appalachian was required to submit drive test data showing mobile transmissions (supporting both voice and data) covering at least 75 percent of previously unserved areas.⁵

⁴ See *Mobility Fund Phase I Support Authorized for 54 Winning Bids, Default on One Auction 901 Winning Bid Determined*, Public Notice, 28 FCC Rcd 10310 (WTB, WCB 2013) (“*Authorization Public Notice*”) (authorizing support for Appalachian Wireless in 19 Census Tracts); see *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, FCC Public Notice, 27 FCC Rcd 12031, 12045-46 (Attach. A) (2012).

⁵ 47 C.F.R. § 54.1006(b).

Though it deployed 4G networks by July 19, 2016, to satisfy the 75 percent coverage requirement for each Additional Census Tract, unfortunately, as discussed in the Petition, unexpected delays beyond Appalachian's control had made it necessary for Appalachian to request an extension of 90 days beyond the July 19, 2016, deadline, or until October 17, 2016, for each of the Additional Census Tracts, to complete the required drive tests and submit the drive test data to the Commission to certify completion of construction and satisfaction of the network coverage requirement in those Census Tracts.⁶

To date, with respect to the Additional Census Tracts, Appalachian Wireless has already submitted the drive test data with the FCC for three of the five Census Tracts.⁷ For the reasons set forth below, Appalachian is now requesting an additional two-week extension to submit the required drive test data for only two of the five Additional Census Tracts.

II. An Additional Two-Week Extension Is Necessary To Enable Appalachian Wireless To Complete the Collection and Submission of Drive Test Data for Census Tracts T21095971300 and T21153970300.

As explained in the Petition, although encountering some unexpected delays, which Appalachian Wireless could not have foreseen and which hindered efforts to meet construction schedules, Appalachian has worked through these delays and completed all planned cellular tower site construction in each of the Additional Census Tracts, including Census Tracts T21095971300 and T21153970300. A 90-day extension of the construction deadline was necessary, however, to enable Appalachian to collect and report drive test data to the Commission, as required by Section 54.1006(b) of the Commission's Rules.

⁶ See Petition at 5-14, 16-18.

⁷ FCC Form 690 was filed for Census Tract T21175950100 on September 28, 2016. FCC Form 690 was filed for Census Tracts T21095971300 and T21153970300 on October 17, 2016.

For each Census Tract, Appalachian Wireless demonstrates below its need for an additional two weeks, or until October 31, 2016, to submit its drive test data.

T21095971300

The general procedure followed by Appalachian Wireless for purposes of complying with the Commission's drive test requirements involves the following steps:

(1) make a drive test "pass" through the Census Tract, with the objective of gathering coverage data for all road categories specified by the Wireless Telecommunications Bureau and the Wireline Competition Bureau for purposes of Auction 901;⁸

(2) submit the collected data to a third party RF engineering consulting firm for an analysis that focuses principally on upload speeds, download speeds, and latency values; and

(3) make as many additional drive test passes as necessary, if the third party contractor's analysis of the data reveals that sufficient data was not collected for all roads in the previous drive test pass.

Census Tract T21095971300, which contains 188.10 eligible road miles (the most eligible roads miles of the Additional Census Tracts), has required three drive test passes and submissions of data by Appalachian Wireless to the third party contractor, thus unexpectedly extending the amount of time necessary to complete the drive test process and prepare the drive test report for submission to the Commission.

The first drive test was completed by Appalachian Wireless, and the resulting data was submitted to the third party contractor, on July 25, 2016. The contractor completed its analysis of

⁸ *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4736 (para. 24) (WTB, WCB 2012) ("Auction 901 Public Notice").

this data in approximately one week, and notified Appalachian Wireless that further drive testing was necessary. Appalachian undertook a second drive test pass, and submitted data resulting from this drive test to the contractor on August 17, 2016. After being advised by the contractor that the submitted data still was not capturing all roads in the Census Tract, Appalachian conducted a third drive test, submitting the resulting data to the contractor on September 9, 2016.

The difficulties associated with capturing sufficient data for all roads covered by the *Auction 901 Public Notice* required three separate drive test passes and led to unforeseen delays in completing the drive testing. Nonetheless, with all drive testing completed by September 9, 2016, Appalachian Wireless still was in a position to meet the October 17, 2016, deadline for reporting the drive test results. Unfortunately, however, further unexpected difficulties intervened.

Specifically, as the third party contractor reviewed data from the third drive test pass, it expressed concerns that the data continued to be incomplete because it did not capture information relating to a number of private roads used in mountainous mining areas in the Census Tract. These concerns led to extensive discussions between Appalachian and the contractor before decisions were reached concerning the best way to report data relating to these private roads.

Ultimately, it was agreed that it would be necessary to rely upon propagation studies to determine coverage of the private roads involved, because of physical obstacles blocking access to several private roads that made it impossible to complete drive test passes.⁹ Additional time was

⁹ The Commission permits the use of propagation studies as a means of demonstrating compliance with Mobility Fund Phase I coverage reporting requirements “in areas where drive tests cannot be completed because of ... physical ... obstacles” *Guidance on Annual Reports and Other Reporting Requirements for Recipients of Support Under Phase I of the Mobility Fund (Including Tribal Mobility Fund)*, 2014 Annual Report Filing Deadline Extended to July 31, 2014, *Specifications for Shapefile Data To Be Submitted with FCC Form 690*, WT Docket No. 10-208, Public Notice, 29 FCC Rcd 7376, 7378 (para. 11) (WTB, WCB 2014).

needed for the preparation of propagation maps showing coverage along the private roads involved.

As a result, the third party contractor's preparation of the final report to be delivered to the Commission—a process which generally takes approximately three to four weeks for larger Census Tracts such as Census Tract T21095971300, and includes formatting the required shape files for submission to the FCC—has been unexpectedly delayed. This delay has prompted Appalachian Wireless's request for an additional two-week extension.

T21153970300

Census Tract T21153970300, which contains 63.58 eligible road miles, has required two drive test passes and submissions of data by Appalachian Wireless to the third party contractor. The first submission of data to the contractor was made on September 9, 2016, which, in the absence of any unforeseen encumbrances, would have been in sufficient time to enable Appalachian to submit its drive test report to the Commission by the October 17, 2016, deadline. Unfortunately, however, the contractor encountered software malfunction issues that unexpectedly prolonged its analysis and resulted in what proved to be an inaccurate determination that the data initially submitted to the contractor by Appalachian was incomplete and further drive testing was required.

Appalachian Wireless carried out a second drive test pass, and submitted the data from this test to the third party contractor on September 30, 2016. In the course of its analysis of this data, the contractor discovered that faulty software had affected the analysis of the data initially submitted by Appalachian on September 9, producing findings of a lack of coverage for roads that in fact were covered by Appalachian's deployed network. Thus, the second drive test pass, which delayed the process of measuring coverage and preparing a report for submission to the Commission, had not been necessary.

Further, the contractor's review of the data submitted on September 30, and its preparation of the final report to be delivered to the Commission, has been unexpectedly delayed because its offices located in Florida were closed for three business days because of Hurricane Matthew.

These unanticipated delays have necessitated Appalachian Wireless's request for an additional two-week extension.

III. Grant of an Additional Two-Week Extension To Enable Appalachian Wireless To Collect and Submit Drive Test Data for Census Tracts T21095971300 and T21153970300 Would Serve the Public Interest.

The Commission may waive its rules based upon a showing of good cause,¹⁰ and it may exercise its discretion to waive a rule where particular facts would make strict compliance with the rule inconsistent with the public interest.¹¹ The Commission may also take into consideration, on a case-by-case basis, factors involving equity, hardship, or more effective implementation of overall policy.¹² "Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest."¹³

Moreover, the Commission has the authority to carry out its responsibilities by promulgating rules of general application that establish the "public interest" for a broad range of cases. In

¹⁰ 47 C.F.R. § 1.3.

¹¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*") (citing *WAIT Radio*, 418 F.2d at 1159).

¹² See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, *Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

¹³ *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Advantage Cellular Systems, Inc. Petition for Waiver of the FCC's Universal Service Rules*, CC Docket No. 96-45, Order on Reconsideration, 31 FCC Rcd 3753, 3754 (para. 5 n.12) (2016) (citing *Northeast Cellular*, 897 F.2d at 1166).

adopting these general rules, however, the Commission is not relieved of its obligation to seek to advance the “public interest” in particular, individualized cases. Thus, the Commission’s authority to waive its rules resembles an obligation, in that it is a *sine quo non* to its ability to adopt otherwise inflexible rules.¹⁴ This waiver authority is a necessary “safety valve” that makes the system work.¹⁵

As explained in the Petition, in the case of Census Tracts T21071920900 and T21095970100 and the other Additional Census Tracts, Appalachian has acted diligently and effectively to accelerate its 4G network deployment efforts. Thus, Appalachian is now able to provide 4G broadband services to communities in each of the Additional Census Tracts for which it sought a 90-day extension in the Petition.¹⁶

The brief extension of the July 19, 2016, deadline was necessary to enable Appalachian to provide drive test data showing that it has complied with the Phase I coverage requirements. In these circumstances, in which Appalachian has overcome various delays and has completed construction by the deadline, neither equity nor the effective implementation of the Commission’s overall Mobility Fund and universal service policies would be served by imposing any penalties pursuant to Section 54.1006(f) of the Commission’s rules.

In this Amendment to the Petition, Appalachian Wireless has shown that, in the case of Census Tracts T21095971300 and T21153970300, although Appalachian proceeded reasonably and with due diligence in working toward the submission of drive test reports by the October 17,

¹⁴ See, e.g., U.S. Cellular, Petition for Limited Waiver and Request for Extension of Dates for Compliance with Mobility Fund Phase I Public Interest Obligations, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 5, 2016) (“U.S. Cellular Petition”), at 12.

¹⁵ See *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”), cited in *Smith Bagley, Inc.*, Petition for Waiver, Expedited Action Requested, AU Docket No. 14-78 (filed Aug. 8, 2014), at 4.

¹⁶ See Petition at 14-15, 22-23.

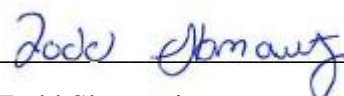
2016, deadline, unforeseen circumstances beyond Appalachian's control have intruded and prevented reporting by that date. Denying Appalachian Wireless's request for an additional two weeks, from October 17, 2016, to October 31, 2016, for Census Tracts T21095971300 and T21153970300 would not serve the public interest because imposing monetary or other penalties pursuant to Section 54.1006(f) would be inequitable, and would not be an appropriate means of implementing the Commission's overall policies, in light of the successful efforts Appalachian has made, and the various delays Appalachian has overcome, to deploy a 4G network throughout Census Tracts T21095971300 and T21153970300, and the three other Additional Census Tracts.

IV. Conclusion.

Appalachian Wireless respectfully submits that it has demonstrated good cause for an additional two-week extension, from October 17, 2016, to October 31, 2016, to submit its drive test data reports for Census Tracts T21095971300 and T21153970300, and that a grant of the amended Petition will be in the public interest. Appalachian respectfully requests that the amended Petition be granted.

Respectfully submitted,

EAST KENTUCKY NETWORK, LLC
d/b/a APPALACHIAN WIRELESS

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October 17, 2016

EXHIBIT A

DECLARATION UNDER PENALTY OF PERJURY

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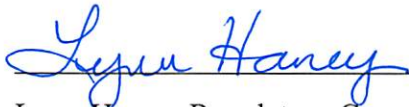
I, Lynn Haney, hereby declare under penalty of perjury as follows:

1. I am the Regulatory Compliance Director for East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless").

2. This Declaration is submitted in support of the Amendment to Petition for Limited Waiver and Request for Extension of Compliance Deadlines for Mobility Fund Phase I Public Interest Obligations ("Petition"), to be filed with the Commission by Appalachian Wireless on October 17, 2016.

3. I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that the facts and information contained in the foregoing Petition are true and correct to the best of my knowledge.

Executed on 10/17/16



Lynn Haney, Regulatory Compliance Director
East Kentucky Network, LLC d/b/a Appalachian Wireless